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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

Federal Communications Commission  
Office of Secretary

In re the Applications of

)

MM Docket No. 97-75

)

PUBLIC BROADCASTING FOUNDATION  
OF NORTHWEST OHIO

)

File No. BPED-950210MB

)

Channel 220, Defiance, Ohio

)

For Construction Permit for  
a new Noncommercial Educational  
FM Station

)

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)

)

MARANATHA CHRISTIAN  
FELLOWSHIP, INC.  
Channel 220A, Howe, Indiana

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For Modification of Facilities  
of Station WQKO-FM  
Howe, Indiana

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To: The Honorable Joseph Chachkin  
Administrative Law Judge

DOCKET FILE COPY ORIGINAL

File No. BPED-950511IE

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Public Broadcasting Foundation of Northwest Ohio ("Foundation"), and  
Maranatha Christian Fellowship, Inc. ("Maranatha") hereby request approval of the  
attached "Settlement Agreement (Agreement)" pursuant to Section 73.3525(a) of the  
Commission's rules. The Agreement will result in (1) withdrawal of Maranatha's  
application for minor modification of Station WQKO, Howe, IN (File No. BPED-  
950511IE) and (2) grant of Foundation's application for a new noncommercial  
educational FM station providing first service to Defiance, OH (File No. BPED-  
950210MB). A request for withdrawal of Maranatha's application accompanies this  
motion.

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1. No engineering changes are required by this agreement. Certifications by declaration of principals of both Foundation and Maranatha are attached in compliance with Section 73.3525(a) of the Commission's rules. The declaration of Maranatha also contains a certification of compliance with the consideration limitations of Section 73.3525.

2. The underlying objectives of Section 307(b) are well-served by facilitating the grant of Foundation's construction permit application to provide first service to Defiance, Ohio. There was some discussion at the pre-hearing conference concerning the applicability of the republication requirement of Section 73.3525(b)(2). This provision requires, in some situations, that a party proposing to withdraw its application pursuant to a settlement agreement publish notice of its proposed withdrawal. Such notice affords other parties the opportunity to apply for the facilities specified in the withdrawn application. This republication requirement is triggered only if the Commission determines that the terms of the proposed settlement agreement impede achievement of "a fair, efficient, and equitable distribution of radio service."

3. The republication requirement is inapplicable here. Maranatha's application proposes to modify its facilities by increasing ERP to 6 kW. It does not propose a new transmission service for any community. Accordingly, requiring republication is unnecessary since no other party could apply to modify the facilities of Station WQKO-FM as specified in Maranatha's application. The Settlement Agreement, rather than impeding this objective, actually advances it by facilitating the grant of Foundation's application to provide first service to Defiance, Ohio.

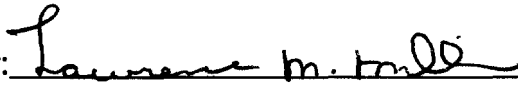
4. WHEREFORE, the parties respectfully request that the Presiding Officer approve the Settlement Agreement.

SCHWARTZ, WOODS & MILLER  
1350 Connecticut Avenue, N.W.  
Suite 300  
Washington, DC 20036-1717  
202-833-1700


Its Attorneys

Respectfully submitted,

PUBLIC BROADCASTING FOUNDATION  
OF NORTHWEST OHIO

By:   
Lawrence M. Miller

MARANATHA CHRISTIAN  
FELLOWSHIP, INC.

By:   
Pastor Ron Hyre

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into this 29th day of April, 1997 by and between Public Broadcasting Foundation of Northwest Ohio, a Ohio non-profit corporation ("Foundation") and Maranatha Christian Fellowship, Inc., an Indiana non-profit corporation ("Maranatha") (each a "Party" and collectively the "Parties").

WHEREAS, Foundation has filed an application (FCC File No. BPED-950210MB) with the Federal Communications Commission ("FCC") for authority to construct a new noncommercial educational FM radio station on Channel 220 at Defiance, Ohio; and

WHEREAS, Maranatha has filed an application (FCC File No. BPED-950511IE) with the FCC for authority to modify facilities of Station WQKO-FM at on Channel 220A at Howe, Indiana;

WHEREAS, the Foundation and Maranatha applications are mutually exclusive and have been designated for a comparative hearing in a Hearing Designation Order issued in MM Docket 97-75; and

WHEREAS, Foundation and Maranatha have agreed to resolve the mutual exclusivity between their applications through a plan which would permit uncontested grant of Foundation's application and withdrawal of Maranatha's application, subject to satisfaction of all of the terms and conditions of this Agreement and FCC approval thereof; and

WHEREAS, resolution of the mutual exclusivity between Foundation and Maranatha pursuant to this Settlement Agreement would serve the public interest in conserving the resources of the FCC and the applicants, expediting the grant of the

Foundation application and permitting the provision of first local noncommercial educational radio service at Defiance, Ohio;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the Parties set forth herein, and subject to the requirements of Section 73.3525 of the FCC's rules, the Parties agree as follows:

1. Withdrawal of Maranatha Application: Simultaneously with the execution hereof, Maranatha will request a withdrawal of its pending application to increase the ERP of Station WQKO-FM, Howe, Indiana to 6 kW. Withdrawal of this application will resolve the mutual exclusivity with Foundation's application for Channel 220.

2. Foundation agrees to pay Maranatha its documented legitimate and prudent engineering costs, up to a total of \$2,500, associated with the preparation and filing of its application. Such payments shall be made no later than 20 days after the order or decision granting the Foundation application becomes a final order. For purposes of this Settlement Agreement, "final order" shall be defined as an action by the FCC granting Foundation's construction permit application, with respect to which no action, request for stay, or petition for rehearing, reconsideration, or appeal is pending, and as to which the time for filing any request, petition or appeal has expired and with respect to which the time for agency action taken on its own motion has expired.

3. FCC Approval. This Settlement Agreement is expressly conditioned upon and subject to the prior consent and approval of the FCC and upon grant of the Foundation application and acceptance of Maranatha's withdrawal. The Parties agree that they will provide all information reasonably necessary in order to obtain approval of this Settlement Agreement and grant of the joint request for approval thereof.

4. Joint Request. Within five days after execution of this Settlement Agreement, the Parties shall prepare, execute, and file with the Presiding Officer all declarations and/or other supporting documentation required by Section 73.3525 of the FCC's Rules which are necessary to secure approval of this Settlement Agreement. Foundation will prepare the joint request for approval of this Settlement Agreement. The joint request will be reviewed and signed by or on behalf of the Parties upon approval by them. Should any declarations or other supporting documentation not be ready for filing at such time, the declarations and/or other supporting documentation will be filed directly by the Party involved as a supplement to the joint request.

5. Additional Acts and Documents. Both parties agree to take such additional acts and file such additional documents as may be necessary to secure approval of and perform their respective obligations under this Settlement Agreement. In particular, Maranatha will file a request for waiver of the republication requirement of Section 73.3525 of the Commission's rules.

6. Entire Agreement. This Settlement Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, supersedes all prior understandings, agreements, negotiations, discussions, and representations, written or oral, and may not be modified, extended, or terminated except by an instrument in writing executed by the Parties.

7. Scope and Binding Effect. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and assigns. Each individual executing this Settlement Agreement on behalf of an entity warrants and represents that he or she has the authority to bind the entity to this Settlement Agreement. Each of the Parties represents that this Settlement Agreement is a legal,

valid and binding obligation of the Party, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, or by court-applied equitable remedies.

8. Termination. Should the FCC or the Presiding Officer for any reason fail or refuse to grant Foundation's application by an order or orders which shall have become final or requires publication of Maranatha's proposal to withdraw its application, then this Agreement shall become null and void, and Foundation and Maranatha shall be free to resume prosecution of their respective applications before the FCC, unless the Parties agree in writing to continue to seek disposition of their applications in accordance with this Agreement, except that this Agreement shall automatically be extended in the event that action and/or inaction by the FCC upon the joint request is the sole cause of the delay.

9. Partial Invalidity. In the event that any provision of this Agreement shall be deemed invalid, such invalidity shall not affect the enforceability of any other provision of his Agreement, unless the invalidity would cause a material change in the rights or obligations of either Party, in which case the Party or Parties affected may seek to amend the Settlement Agreement or withdraw from the Settlement Agreement.

10. Waivers. No waivers by either Party of any default by the other Party in the performance of or compliance with any condition, provision, or requirement of this Settlement Agreement shall be a waiver of performance thereof in the future or of compliance with any other condition, provision, or requirement thereof, nor shall any delay or omission of any Party to exercise any right accruing to it thereafter constitute a waiver of compliance with any other condition, provision or requirement thereof.

11. Specific Performance. In the event of a breach of this Settlement Agreement by either party, then the non-breaching Party shall be entitled to secure specific performance of this Settlement Agreement, it being understood and agreed by the Parties that any legal remedy or remedies that otherwise might be available would not be adequate to cure or compensate for such breach of this Settlement Agreement.

12. Counterparts. This Settlement Agreement may be executed in counterparts, both of which together shall constitute the original.

13. Governing Law; Litigation Expense. The Parties agree that this Settlement Agreement shall be construed under the laws of Ohio. In any litigation arising out of this Settlement Agreement, the prevailing party shall have the right to recover from the other party its reasonable costs and expenses, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date first above written.

PUBLIC BROADCASTING  
FOUNDATION OF  
NORTHWESTERN OHIO

MARANATHA CHRISTIAN  
FELLOWSHIP, INC.

By: Shirley E. Trisner

By: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_



11. Specific Performance. In the event of a breach of this Settlement Agreement by either party, then the non-breaching Party shall be entitled to secure specific performance of this Settlement Agreement, it being understood and agreed by the Parties that any legal remedy or remedies that otherwise might be available would not be adequate to cure or compensate for such breach of this Settlement Agreement.

12. Counterparts. This Settlement Agreement may be executed in counterparts, both of which together shall constitute the original.

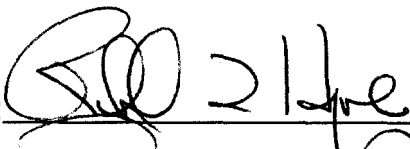
13. Governing Law; Litigation Expense. The Parties agree that this Settlement Agreement shall be construed under the laws of Ohio. In any litigation arising out of this Settlement Agreement, the prevailing party shall have the right to recover from the other party its reasonable costs and expenses, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date first above written.

PUBLIC BROADCASTING  
FOUNDATION OF  
NORTHWESTERN OHIO

MARANATHA CHRISTIAN  
FELLOWSHIP, INC.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Title: \_\_\_\_\_

Title: President / Pastor \_\_\_\_\_

## DECLARATION

I, Shirley E. Timonere, President of Public Broadcasting Foundation of Northwest Ohio ("Foundation"), hereby certify that:

1. The Settlement Agreement between Foundation and Maranatha Christian Fellowship, Inc. ("Maranatha") sets forth all terms and provisions of the agreement between the two parties;

2. The Agreement serves the public interest because it facilitates the provision of first service to the community of Defiance, Ohio and does not impede coverage to Howe, Indiana;

3. Foundation's application for a new noncommercial FM station was not initially filed for the purpose of ultimately entering into the Settlement Agreement;

4. Foundation has not received any consideration for entering into the Agreement;

5. Foundation shall pay to Maranatha the amount of \$2,500, or such lesser amount as approved by the Commission, such payment to cover the legitimate and prudent expenses incurred by Maranatha with respect to the filing, prosecution, and withdrawal of its application; and

6. There are no other agreements, oral or written, between Foundation and Maranatha relating to the withdrawal of Maranatha's application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 29, 1997.

By: Shirley E. Timonere  
Shirley E. Timonere

## DECLARATION


I, Pastor Ron Hyre, President of Maranatha Christian Fellowship, Inc.

("Maranatha"), hereby certify that:

1. The Settlement Agreement between Maranatha and Public Broadcasting Foundation of Northwest Ohio ("Foundation") sets forth all terms and provisions of the agreement between the two parties;
2. The Agreement serves the public interest because it facilitates the provision of first service to the community of Defiance, Ohio and does not impede coverage to Howe, Indiana;
3. Maranatha's application for minor modification of facilities was not initially filed for the purpose of ultimately entering into the Settlement Agreement;
4. Maranatha has not received, and will not receive, for entering into this Agreement any consideration beyond that for reimbursement of legitimate and prudent expenses incurred in the preparation and prosecution of its application;
5. Maranatha will receive from Foundation the amount of \$2,500, such payment to cover the legitimate and prudent expenses incurred by Maranatha with respect to the preparation and prosecution of its application. An itemized accounting of those expenses is attached; and
6. There are no other agreements, oral or written, between Maranatha and Foundation relating to the withdrawal of Maranatha's application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 29, 1997.

By:   
Pastor Ron Hyre

*Robert Moore  
1908 Sweetbriar Dr.  
Goshen, IN 46526*

*March 25, 1997*

Pastor Ron Hyre  
Maranatha Fellowship  
6200 E State Road 120  
Howe, IN 46746

Billing for services rendered:

Feasibility study for expansion of WQKO.....	\$1000	\$1000	
Application for NonCommercial Directional serving Howe, IN.....	\$2000	\$3000	
Less expenses paid .....	\$-500	\$2500	DUE

This is a duplicate of a bill submitted for work done in May, 1996.

Bob Moore

**MARANATHA CHRISTIAN FELLOWSHIP, INC.**  
**6200 East State Road 120**  
**Howe, Indiana**  
**46746**

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Re: Maranatha Christian Fellowship, Inc.  
File No. BPED-950511IE  
For Modification of Facilities of Station WQKO-FM  
Channel 220A  
Howe, Indiana

Dear Mr. Caton:

Maranatha Christian Fellowship, Inc. ("Maranatha") respectfully withdraws the above-referenced application by Maranatha filed with the Commission on May 11, 1995, provided that this withdrawal is conditioned upon the Commission's full approval of the Settlement Agreement between Maranatha and Public Broadcasting Foundation of Northwest Ohio ("Foundation"), submitted herewith.

Respectfully submitted,

MARANATHA CHRISTIAN  
FELLOWSHIP, INC.

By: \_\_\_\_\_

Pastor Ron Hyre

Date: \_\_\_\_\_

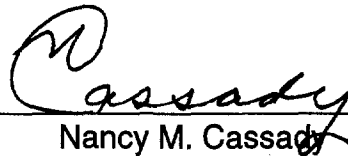
4/29/97

## CERTIFICATE OF SERVICE

I, Nancy M. Cassady, Secretary in the firm of Schwartz, Woods & Miller, certify that I have on this 2<sup>nd</sup> day of May, 1997, sent by First Class United States mail, postage prepaid, copies of the foregoing **JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT** to the following:

James Shook, Esquire, Room 8210 \*  
Complaints and Political Programming  
Federal Communications Commission  
2025 M Street, N.W.  
Washington, DC 20037

Pastor Ron Hyer, President  
Maranatha Christian Fellowship, Inc.  
6200 E. State Road 120  
Howe, IN 46746



Nancy M. Cassady

\* By Hand